

MARGARET A. BEATRIZ
Claimant

STANLEY R. AUSEMUS, CHTD.
Respondent

CONTINENTAL WESTERN INS. CO.
Insurance Carrier

Docket No. 1,025,143

Respondent and its insurance carrier requested review of the March 24, 2006, preliminary hearing Order For Medical Treatment entered by Administrative Law Judge Pamela J. Fuller.

The Administrative Law Judge (ALJ) ordered medical treatment to be paid by respondent on claimant's behalf until further order or until she is certified as having reached maximum medical improvement.

The respondent and its insurance carrier (respondent) assert that the ALJ erred in ordering respondent to furnish medical treatment for claimant. Respondent argues that claimant's symptoms did not arise out of and in the course of her employment but are a result of claimant's preexisting health problems. Respondent argues that Dr. Pedro Murati's opinion that claimant's bilateral carpal tunnel syndrome was caused by a work-related accident is suspect because claimant did not inform Dr. Murati about her preexisting health issues. In the alternative, if the Board finds that claimant did suffer a work-related injury, respondent requests that claimant's medical treatment be limited to her right upper extremity.

Claimant contends the evidence supports the ALJ's Order for Medical Treatment and it should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

Claimant has been working for 13 years as an interpreter for respondent. She only works one week a month, but during that week she could work up to 60 hours. Claimant does not do any typing, computer work, or repetitive work with her hands. She does not use any vibratory tools. She takes notes at times while interpreting, and she will pick up files of varying weights and hand them to Mr. Ausemus at times. Sometimes she will drive clients to appointments for medical treatments, and sometimes she will help load boxes of files into Mr. Ausemus' vehicle.

On July 13, 2004, claimant picked up a file with her right hand and felt a shock that went up her arms and made her arms burn. The condition got worse, and respondent made an appointment for her with Dr. Pedro Murati. Dr. Murati diagnosed her with bilateral carpal tunnel syndrome and right ulnar cubital syndrome and recommended physical therapy, splinting, and anti-inflammatory and pain medication as needed. He opined that her diagnoses are "within all reasonable medical probability a direct result from the work-related injury that occurred . . . during her employment with Stanley Ausemus."¹

Claimant was asked if she had pain in either of her arms or hands before July 13, 2004. She testified: "Well, I felt—I felt my hands, you know, a numbness in my hands, and I felt a cramping in my hand, but you know, it wasn't that bad but I felt it. And I felt weakness in my hands."² However, she said her hands became a lot worse after July 13, 2004.

Claimant suffers from many preexisting health conditions, including poorly controlled Type 2 diabetes mellitus, congestive heart failure, hypothyroidism, chronic renal insufficiency, and obesity. She has been on Social Security disability since 1993 or 1994 because of her congestive heart failure. Respondent introduced an article from MayoClinic.com which lists thyroid problems, diabetes, and obesity as health conditions which can increase the risk for developing carpal tunnel syndrome.

Claimant did not tell Dr. Murati about her preexisting medical conditions. She claims that she was never told about her hypothyroidism or that she had chronic renal insufficiency. When Dr. Murati asked whether claimant had any previous injuries affecting her bilateral upper extremities, she denied having any, although she had injured her arm in a 1981 motor vehicle accident. Also, in 1997, claimant attempted to insert a quarter in

¹P.H. Trans. (Mar. 22, 2006), Cl. Ex. 1 at 2.

²Beatriz Depo. (Oct. 7, 2005) at 26.

a pop machine with her right hand and was shocked. She was seen by Dr. Robert McKissick at that time and complained of pain and numbness in her right hand and forearm with loss of strength. Claimant said that condition had previously been resolved.

On January 3, 2006, claimant was sent to see Dr. Timothy Schweitzer by respondent. Claimant told Dr. Schweitzer about her diabetes and congestive heart failure but not the hypothyroidism or the chronic renal insufficiency. Dr. Schweitzer agreed with Dr. Murati that claimant was suffering from bilateral carpal syndrome, with the right being worse than the left. He also diagnosed her with bilateral cubital tunnel syndrome, right more than left. He recommended nerve conduction and EMG tests. However, Dr. Schweitzer opined: "With regard to etiology, it seems that these conditions were in evolution prior to the date of injury [07/13/04]. Whether this is directly caused by her job, I cannot say for sure."³

Claimant currently complains of numbness in her hands. She said they cramp a lot. She has trouble sleeping because of the numbness, and she usually sleeps in a chair. The pain will sometimes go up into her shoulders, which causes them to ache. She said the right side is worse than the left side.

Respondent denies that claimant's injuries or conditions are work related. The central issue is causation of claimant's carpal tunnel syndrome and cubital tunnel syndrome.

The record contains two expert medical opinions on this issue. Dr. Murati relates these conditions to claimant's employment with respondent, specifically the lifting incident that occurred on July 13, 2004. Dr. Schweitzer cannot say whether or not claimant's employment caused or contributed to her condition. He believes these conditions probably preexisted the July 13, 2004, incident. However, this claim was pled as a series beginning "July 13, 2004 and each and every day thereafter."⁴ Both medical opinions are suspect because of the physicians lack of an accurate and full medical history, particularly that of Dr. Murati. And neither physician testified, so their opinions have not been subjected to cross-examination. Nevertheless, no physician has rendered an opinion that claimant's conditions were not caused, aggravated, or accelerated by her work activities. Accordingly, for purposes of preliminary hearing, the Board finds that by the barest of margins, claimant has met her burden of proving she suffered personal injuries to her bilateral upper extremities by accident or accidents that arose out of and in the course of her employment with respondent.

³P.H. Trans. (Mar. 22, 2006), Resp. Ex. 6 at 2.

⁴ Form K-WC E-1 filed September 9, 2005.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁵

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Pamela J. Fuller dated March 24, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June, 2006.

BOARD MEMBER

c: Terry J. Malone, Attorney for Claimant
Nathan D. Burghart, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵ K.S.A. 44-534a(a)(2).